

FILED

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TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

HOSPITALITY BUILDERS, INC., a foreign
corporation,

Plaintiff,

vs.

SPOKANE SOUTH MEDICAL LLC, a
Washington limited liability company;
MOUNTAIN AMERICA FEDERAL
CREDIT UNION, a foreign corporation,

Defendants.

No. **20202002-32**

COMPLAINT FOR FORECLOSURE OF
LIEN

COMES NOW, plaintiff Hospitality Builders, Inc. ("HBI"), by and through its undersigned counsel and by way of complaint against defendant, alleges and avers as follows:

I. JURISDICTION AND VENUE

1.1 This court has subject matter jurisdiction pursuant to RCW 2.08.010.

COMPLAINT
PAGE 1

COPY

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
Bank of America Financial Center
601 West Riverside Avenue, Suite 1900
Spokane, Washington 99201-0695
(509) 838-6131

EXHIBIT G

1.2 The real property improved is located at the address commonly known as 675 S. McClellan Street, Spokane, Washington ("Property"). Therefore venue is proper under RCW 60.04.171.

II. PARTIES

2.1 Plaintiff and lien claimant HBI is and was a South Dakota corporation, registered to do business in the State of Washington. HBI has paid all fees and satisfied all conditions necessary to maintain this action and is a licensed and registered contractor in the State of Washington.

2.2 At all times material hereto, defendant Spokane South Medical, LLC ("Spokane South") was a Washington limited liability company doing business in Spokane County, Washington, and the owner or reputed owner of the Property.

2.3 At all times material hereto, defendant Mountain America Federal Credit Union ("Mountain America") is a foreign corporation registered to do business in the State of Washington, with its principal place of business in Sandy, Utah.

III. STATEMENT OF FACTS

3.1 The legal description of the Property is: RAILROAD 2ND ADD: Lots 3, 4, 7 through 12 Block 90 Except any portion deeded to the City of Spokane for road purposes and Except any portion dedicated to public under Resolution dated March 22, 1979 under Auditor's File No. 7903220205, Together with that portion of vacated alley which attaches by law, recorded September 23, 2013, under Auditor's File No. 6250093.

- 1 3.2 Mountain America is the holder of a deed of trust, recorded December 4, 2015,
2 which is secured by the Property.
- 3 3.3 On April 15, 2015, HBI and Spokane South entered into a cost plus contract
4 ("Contract") to furnish labor, materials, equipment, and supplies for the
5 improvement of the Property.
- 6 3.4 HBI began furnishing labor, materials, equipment, and supplies for the
7 improvement of the Property on or about January 25, 2016, at the instance of
8 Spokane South pursuant to the Contract.
- 9 3.5 HBI terminated its contract with Spokane South on November 20, 2019, for
10 Spokane South's defaults and failure to pay HBI's outstanding and past due
11 applications for payment.
- 12 3.6 The last date on which labor was performed, professional services were furnished,
13 contributions to an employee benefit plan were due, or material or equipment was
14 furnished was on or after November 21, 2019.
- 15 3.7 On or about November 22, 2019, HBI mailed by certified mail, return receipt
16 requested, a notice of claim of lien to Spokane South.
- 17 3.8 Spokane South's agent accepted delivery of the notice of claim on December 2,
18 2019.
- 19 3.9 HBI recorded a Claim of Lien against the Property on November 26, 2019, with
20 the Spokane County Auditor's Office under recording number 6868214. A copy
21 of the Claim of Lien is attached as Exhibit A.
- 22
23
24

1 3.10 The Claim of Lien was recorded within 90 days of the last date that HBI furnished
2 labor or materials.

3 3.11 The principal amount for which the lien is claimed for the improvements on the
4 Property is \$716,990.98.

5 3.12 The Contract includes an agreement to arbitrate all claims or disputes between
6 HBI and Spokane South arising out of or relating to the Contract or the breach
7 thereof, in accordance with the Construction Industry Rules of the American
8 Arbitration Association (“AAA”), and specifying Aberdeen, South Dakota as the
9 hearing locale.

10 3.13 Such arbitration agreement is valid, irrevocable, and enforceable pursuant to the
11 Federal Arbitration Act, 9 U.S.C. §2 and the South Dakota Arbitration Act,
12 S.D.C.L. 21-25A-1.

13 3.14 On or about January 10, 2020, HBI commenced arbitration against Spokane South
14 by filing a Demand for Arbitration with the AAA. The arbitration is being
15 administered as AAA Case No. 02-20-0000-1049 (“the Arbitration”). Three
16 arbitrators have been appointed to hear and determine the claims, counterclaims,
17 and disputes between HBI and Spokane South.

18 3.15 The total amounts which HBI is entitled to recover against Spokane South, as well
19 as any other claims and disputes among the parties, are matters subject to
20 arbitration which must be determined in the Arbitration.

1 3.16 Proceedings for confirmation of any arbitration award are subject to the
2 jurisdiction of the United States District Court for the District of South Dakota,
3 Northern Division, or the Fifth Judicial Circuit Court of South Dakota for Brown
4 County, as provided by the Contract.
5

6 **IV. CAUSE OF ACTION – LIEN FORECLOSURE**

7 4.1 HBI incorporates the averments in paragraphs 1.1 through 3.16 as if fully restated
8 herein.

9 4.2 HBI has complied with all procedural aspects of the Washington mechanics' lien
10 statute, RCW 60.04 et seq., and is therefore entitled to foreclose on the lien to
11 satisfy the debt owed to HBI.
12

13 4.3 HBI has a valid and enforceable lien for the principal amount of \$716,990.98.

14 4.4 The claim of lien is valid for a period of eight months, at which time the lien
15 foreclosure action must be commenced.

16 4.5 HBI's foreclosure is timely because the time to commence a foreclosure action
17 has not yet expired.

18 4.6 HBI is commencing this action to preserve and foreclose the lien, but nothing
19 herein may be construed to waive any of HBI's rights, remedies, claims, or
20 defenses under the Contract or applicable law, including but not limited to the
21 claims asserted and relief sought by HBI in the Arbitration.
22
23
24


4.7 Further, nothing herein may be construed as HBI's consent that Spokane South is entitled to assert any claim or counterclaim against HBI other than in the Arbitration.

V. PRAYER FOR RELIEF

WHEREFORE, plaintiff HBI prays for relief as follows:

1. For a stay of this action pending the Arbitration and any proceedings to confirm and enter judgment on the Arbitration award;
2. Upon and subject to confirmation of the Arbitration award, for judgment against the Property in the principal sum of \$716,990.98, plus interest, costs, and attorney's fees;
3. For establishment of plaintiff's lien as superior to the interest, if any, of any persons or entities not joined in this suit;
4. For foreclosure of plaintiff's construction lien against the Property;
5. For an award of attorney's fees and costs under RCW 60.04.181(3);
6. For leave to amend plaintiff's complaint, should amendment be appropriate; and
7. For such other relief as the court deems just and equitable.

DATED this 23 day of July, 2020.

 *Darren D. Leland WSBA 39771 for Collette Leland*
COLLETTE C. LELAND, WSBA No. 40686
WINSTON & CASHATT, LAWYERS, a
Professional Service Corporation
Attorneys for Plaintiff

STATE OF SOUTH DAKOTA)
) : ss.
County of Pennington)

That he is the President of the above-named plaintiff, Hospitality Builders, Inc., and is authorized to and makes this verification for and on behalf of said corporation; that he has read the above and foregoing Complaint, knows the contents thereof, and believes the same to be true.

Resan' Kord
Signature

SUBSCRIBED AND SWORN to before me this 23rd day of July, 2020.



Stephanie Stouck
Notary Public in and for the State of
South Dakota, residing at Pennington Co.
My appointment expires 3-11-2023

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

HOSPITALITY BUILDERS, INC., a
foreign corporation,
Plaintiff,

vs.

SPOKANE SOUTH MEDICAL LLC, a
Washington limited liability company;
MOUNTAIN AMERICA FEDERAL
CREDIT UNION, a foreign corporation,
Defendants.

No. – *to be assigned*

GR 17 AFFIDAVIT RE:
COMPLAINT FOR FORECLOSURE OF
LIEN

STATE OF WASHINGTON)
: ss.
County of Spokane)

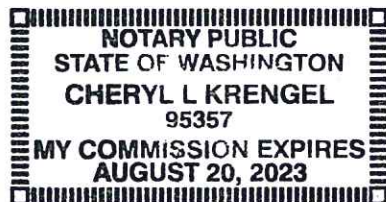
Cheryl Hansen, being first duly sworn on oath, deposes and states as follows:

1. I am a paralegal at Winston & Cashatt and am the person who received the foregoing signature page via email from Kevin Krank. I have examined the document entitled, "COMPLAINT FOR FORECLOSURE OF LIEN," to which the emailed signature page is attached; it is complete and legible, and consists of ten (10) pages, including the signature page, and this Affidavit.

Cheryl Hansen

Cheryl Hansen, Paralegal
Winston & Cashatt
601 W. Riverside Ave., Suite 1900
Spokane, WA 99201
Telephone: (509) 838-6131
Fax: (509) 838-1416

SUBSCRIBED AND SWORN to before me this 23rd day of July, 2020.



Cheryl Krengel

Notary Public in and for the State of
Washington, residing at *Coeur d'Alene*
My appointment expires: *8/20/23*

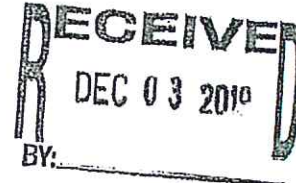
GR 17 AFFIDAVIT

11/26/2019 01:05:39 PM
Recording Fee \$104.50 Page 1 of 2
Lien HOSPITALITY BUILDERS
Spokane County Washington

6868214



RETURN ADDRESS
Hospitality Builders, Inc.
150 Knollwood Dr.
Rapid City, SD 57701



CLAIM OF LIEN
(RCW 60.04.091)

HOSPITALITY BUILDERS, INC.,
Claimant,

vs.

SPOKANE SOUTH MEDICAL, LLC,
Respondent.

NOTICE IS HEREBY GIVEN that the undersigned claims a lien pursuant to Chapter 64.04 RCW. In support of this lien, the following information is submitted:

1. Name of Lien Claimant:

Hospitality Builders, Inc.,
Address: 150 Knollwood Dr., Rapid City, SD 57701
Telephone number: 605-791-3400

2. Date on which Claimant began to perform labor, provide professional services, supply material or equipment or the date on which employee benefit contributions became due:

January 25, 2016

3. Name of person who requested labor, materials and equipment and is indebted to Claimant:

Spokane South Medical, LLC

4. Description of the property against which a lien is claimed:

Tax Parcel No.: 35195.4813
Address: Hampton Inn & Suites, 675 South McClellan St, Spokane, WA 99204
Legal Description: RAILROAD 2ND ADD: Lots 3, 4, 7 through 12 Block 90 Except any portion deeded to the City of Spokane for road purposes and Except any portion dedicated to public under Resolution dated March 22, 1979 under Auditor's File No.



